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Attorneys for Defendant, WORLD FINANCIAL NETWORK NATIONAL BANK

FILED
2008 AUG -8 PM 12: 48
CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
BY ________ DEPUTY

BY FAX

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GERALD G. FILIPS, an individual, PLAINTIFF, VS. WORLD FINANCIAL NETWORK NATIONAL BANK, a national bank, DEFENDANT.	CASE NO. '08 CV 1447 JAH CAB **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (FEDERAL QUESTION & DIVERSITY)**

DEFENDANT'S NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that defendant World Financial Network National Bank hereby removes to this court the state court action described below.

1. On June 23, 2008, Plaintiff sued Defendant for violation of the California Rosenthal Act, California Civil Code sections 1788 et seq. which incorporate by reference 15 U.S.C. § 1692,

ORIGINAL

CARLSON & MESSER LLP
5959 W. CENTURY BOULEVARD, SUITE 1214
LOS ANGELES, CALIFORNIA 90045

Fair Debt Collections Practices Act ("FDCPA") in the Superior Court of the State of California, County of San Diego, North County Branch. The case is styled: *Gerard G. Filips, Plaintiff. v. World Financial Network National Bank, Defendant*, San Diego County Superior Court Case No. 37-20008-00055680-CU-PO-NC.

2. Defendant received notice of the suit on or after July 10, 2008, when it received the summons and complaint and a request to acknowledge service by mail which had been mailed to Defendant's old address and forwarded to its current address. Defendant files this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b).

A. Parties

3. Plaintiff Gerald G. Filips is and at all relevant times was a California resident and a citizen of the State of California.

4. Defendant WORLD FINANCIAL NETWORK NATIONAL BANK is and at all relevant times was a national bank, chartered by the Office of the Comptroller of the Currency, whose principal place of business is Columbus, Ohio. Accordingly, Defendant is, at all relevant times was, a citizen of the State of Ohio. *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303 (2006).

5. There are no parties to this action besides Plaintiff and Defendant.

6. All pleadings, process, orders, and other filings in the state court action which were sent to Defendant are attached to this notice as required by 28 U.S.C. §1446(a).

B. Basis for Removal

7. Removal is proper because Plaintiff's suit involves a federal question. 28 U.S.C. §§1331, 1441(b); *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 757-58 (6th Cir. 2000); *Peters v. Union Pac. R.R.*, 80 F.3d 257, 260 (8th Cir. 1996). Specifically, Plaintiff's alleged claims arise under both 15 U.S.C. § 1692, *et seq.* and the California Rosenthal Act, California Civil Code §§1788 et seq. Accordingly, the issue of whether Defendant violated the FDCPA is a necessary issue which is actually disputed. Moreover, the issue is substantial and the removal of the artfully pleaded state law claim will not disrupt the balance of federal and state judicial responsibilities. *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005).

///

8. Removal is also proper under this Court's diversity jurisdiction because Plaintiff is a California citizen and Defendant is a citizen of Ohio, and the amount in controversy is more than $75,000. See 28 U.S.C. §1332(a)(2). Plaintiff's suit seeks to recover $76,391.00.

9. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place where the removed action has been pending.

10. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

C. Jury Demand

11. Upon information and belief, Plaintiff has not filed a demand for a jury trial in the state court action, but the caption for the complaint indicates, "JURY TRIAL DEMANDED."

D. Conclusion

12. Defendant respectfully requests removal of this action because it involves a Federal question arising under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

13. Defendant also respectfully requests removal of this action because there is complete diversity of citizenship and the amount in controversy is greater than $75,000. 28 U.S.C. § 1332(a)(2).

DATED: August 7, 2008

CARLSON & MESSER LLP

By [signature]
David J. Kaminski
Attorneys for Defendant,
WORLD FINANCIAL NETWORK
NATIONAL BANK

CARLSON & MESSER LLP
5959 W. CENTURY BOULEVARD, SUITE 1214
LOS ANGELES, CALIFORNIA 90045

ATTACHMENT

SU ,ONS
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
NORTH COUNTY ...
2008 JUN 23 AM 11:58
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
World Financial Network National Bank

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Gerald G. Filips

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California
325 South Melrose
325 South Melrose
Vista, CA 92081
North County Division

CASE NUMBER: 37-2008-00055880-CU-PD-NC
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Matt M. McCormick, SBN 182543 (760) 450-3333 (760) 720-6082
Doan Law Firm, LLP
2850 Pio Pico Drive, Suite D
Carlsbad, CA 92008

DATE: JUN 2 3 2008 Clerk, by J. Bako, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Legal Solutions Plus

Code of Civil Procedure §§ 412.20, 465

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Matthew M. McCormick
Matthew M. McCormick, SBN 182543
Doan Law Firm, LLP
2850 Pio Pico Drive, Suite D
Carlsbad, CA 92008
TELEPHONE NO.: (760) 450-3333 FAX NO.: (760) 720-6082
ATTORNEY FOR (Name): Gerald G. Filips

FOR COURT USE ONLY
FILED
NORTH COUNTY DIV...
2008 JUN 23 AM 11:58
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 325 South Melrose
MAILING ADDRESS: 325 South Melrose
CITY AND ZIP CODE: Vista, CA 92081
BRANCH NAME: North County Division

CASE NAME: Gerald G. Filips v. World Financial Network National Bank

CIVIL CASE COVER SHEET

[X] Unlimited (Amount demanded exceeds $25,000)
[ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2008-00058680-CU-PO-NC
JUDGE:
DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [X] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Type of remedies sought *(check all that apply)*:
   a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [X] punitive
4. Number of causes of action *(specify)*: 4
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date:
Matthew M. McCormick
(TYPE OR PRINT NAME)

▶ [signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Matthew M. McCormick, SBN 182543
Doan Law Firm, LLP
2850 Pio Pico Drive, Suite D
Carlsbad, CA 92008
Phone (760) 450-3333 • Fax (760) 720-6082
matt@doanlaw.com

2008 JUN 23 AM 11: 59

SAN DIEGO COUNTY, CA

Attorney for PLAINTIFF

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
NORTH COUNTY JUDICIAL DISTRICT

GERALD G. FILIPS, Plaintiff, vs. WORLD FINANCIAL NETWORK NATIONAL BANK, and DOES 1 through 10, inclusive, Defendants.	Case No: 37-2008-00058880-CU-PO-NC **COMPLAINT SEEKING MONETARY DAMAGES, INJUNCTIVE DECLARATORY RELIEF, FOR VIOLATIONS OF RFDCPA; RIGHT TO PRIVACY; TORT IN SE.** **DEMAND: $76,391.00, ATTORNEY FEES AND COSTS, INJUNCTIVE RELIEF, DECLARATORY RELIEF.** **JURY TRIAL DEMANDED**

I.

INTRODUCTION

1. Plaintiff, GERALD G. FILIPS, ("FILIPS"), brings this Lawsuit against the DEFENDANT, WORLD FINANCIAL NETWORK NATIONAL BANK, ("WFNNB"), for its unlawful and unfair debt collection practices in repeated violations of the **Rosenthal Fair Debt Collection Practices Act ("RFDCPA")** and other **Torts.**

2. FILIPS seeks actual economic and non-economic damages, attorney

fees, costs, injunctive relief, punitive damages, and declaratory relief.

II.

FINDINGS AND PURPOSE OF STATUTES VIOLATED

3. The California Legislature made the following **findings** and **purpose** in creating the **RFDCPA**:

(1) The banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts. Unfair or deceptive collection practices undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers.

(2) There is need to ensure that debt collectors and debtors exercise their responsibilities to one another with fairness, honesty and due regard for the rights of the other.

(b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts, as specified in this title.

4. On September 3, 1999, "urgency legislation" was passed adding 1788.17 to the RFDCPA which incorporated nearly all of the provisions of the Federal Fair Debt Collection Practices Act ("FDCPA").

5. The United States Congress has made the following **findings** and declaration of **purpose** under the **FDCPA**:

(a) Abusive practices. There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to

the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws. Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(e) Purposes. It is the purpose of this title [15 USCS §§ 1692 et seq.] to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

6. The Gravamen of FILIPS' complaint is that WFNNB violated State and Federal laws which were specifically enacted to protect him from abusive, deceptive, and unfair conduct by WFNNB.

III.

JURISDICTION

7. Jurisdiction of this Court arises under Cal. Code Civ. Proc. 410.10 et seq.

IV.

PARTIES

8. FILIPS is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

9. WFNNB is a "debt collector" as that term is defined by California Civil Code §1788.2(c) and is a "person" as that term is defined by California Civil Code § 1788.2 (g).

V.

FACTS

FILIPS Retained Law Firm:

10. FILIPS Incurred a "debt" with WFNNB as that term is defined by California Civil Code §1788.2(d) and 15 U.S.C. § 1692a(5).

11. On 09/12/2007, FILIPS retained the DOAN LAW FIRM to end communications on the debt under the RFDCPA, and to eliminate all personal liability on the debt via Title 11 of the United States Code.

12. Specifically, DOAN LAW FIRM was retained to provide the following three (3) services:

    1) Stop all future communications and harassment from creditors using the RFDCPA and FDCPA;
    2) Eliminate personal liability under Title 11 relief; and
    3) Ensure creditors comply under the Fair Credit Reporting Act (FCRA) after the Bankruptcy Discharge.

13. FILIPS paid money for services to stop creditor communications from the retainer date until the Bankruptcy was filed.

14. The debt to WFNNB was eventually discharged by a Chapter 7 Bankruptcy and WFNNB has no further contractual rights to enforce the debt against FILIPS personally.

Legal Help Was Provided To Protect FILIPS From WFNNB:

15. Prior to the Bankruptcy Filing, DOAN LAW FIRM, LLP ordered WFNNB, by verbal notice to cease all communications with FILIPS

16. The verbal notice to WFNNB specifically provided the following:
    a) FILIPS would soon be filing for Title 11 Federal Protection;
    b) Advised that FILIPS refused to pay the debt;
    c) Advised that there was now attorney representation by the DOAN LAW FIRM, LLP with respect to the debt; and
    d) Ordered that WFNNB Cease and Desist all further communications with FILIPS with respect to the debt.

WFNNB Had Actual Knowledge Of Attorney Representation:

17. WFNNB physically received the Cease and Desist Order(s).

18. WFNNB had actual knowledge of **attorney representation** by the DOAN LAW FIRM, LLP.

19. WFNNB actually knew it had to **Cease and Desist** all further communications with FILIPS with respect to the debt.

20. WFNNB actually knew FILIPS **refused to pay** the debt.

21. WFNNB actually knew FILIPS was preparing to file for **Federal Relief under Title 11**.

22. WFNNB actually **knew that it was now prohibited from contacting** FILIPS by all means.

23. WFNNB actually knew it could no longer call, write, send billing statements, statements of account, or any other communication except legal process to FILIPS.

24. WFNNB knew it could only communicate with the DOAN LAW FIRM, LLP.

25. WFNNB knew it could only call, write, send billing statements, and send statements of account, to the DOAN LAW FIRM, LLP.

26. WFNNB knew that any further communications of any kind with FILIPS were prohibited, unlawful, illegal, and would subject it to liability damages.

WFNNB Committed Unlawful Acts:

27. Despite knowledge of attorney representation, WFNNB intentionally, willfully, deliberately, and knowingly, refused to abide by the laws of the RFDCPA and FDCPA as demanded in the Cease and Desist Orders, and communicated with FILIPS in an attempt to collect on its debt.

28. Specifically, WFNNB continued communications with FILIPS, as further evidenced by Exhibit "A" incorporated herein.

29. The unlawful contact by WFNNB can be summarized by the following chart:

RFDCPA Violations			
World Financial Network National Bank			
One (1) Notice			
	Date	Type	Comments
1	02/18/08	Verbal Notification	WFNNB representative called the Doan Law Firm to verify representation. WFNNB was told to cease and desist. Phone no: 800-305-1146 x8059
Two (2) Contact Violations: (See Exhibit "A")			
	Date	Type	Comments
1	05/18/08	Letter	Sent despite notification
2	06/02/08	Letter	Sent despite notification

WFNNB Willfully And Knowingly Violated the RFDCPA:

30. As a "Debt Collector," WFNNB is fully aware of California's debt collection laws, including the RFDCPA and FDCPA.

31. WFNNB knew each of its harassing communications were subject to Title 1.6C (RFDCPA) of the California Civil Code and 15 USC § 1692 (FDCPA).

32. WFNNB knew each of its harassing communications were willful and knowing violations of Title 1.6C (RFDCPA) of the California Civil Code and 15 USC § 1692 (FDCPA).

33. WFNNB'S harassing communications are part of an overall unlawful business pattern and practice whereby it has knowingly, willfully, and intentionally enterprised a profitable scheme through illegal collection activity.

34. WFNNB rarely, if ever, is sued over such harassing communications, since very few debtors are aware that their rights are being violated and/or very few attorneys are willing to take on such cases.

35. WFNNB is highly motivated to continue their harassing communications since any claims paid out as a result of such wrongful conduct are minuscule when compared to the overall profits generated from such illegal acts.

FILIPS Suffered Damages As A Result Of WFNNB'S Conduct:

36. As a direct result of WFNNB'S harassing communications, FILIPS has incurred actual damages consisting of mental and emotional distress, nervousness, grief, embarrassment, loss of sleep, anxiety, worry, mortification, shock, humiliation, indignity, pain and suffering, and other injuries.

37. FILIPS incurred out of pocket monetary damages when attorney fees and costs were paid to the DOAN LAW FIRM, LLP, for services provided to protect FILIPS under the RFDCPA and FDCPA, which ultimately failed.

38. FILIPS incurred additional incidental actual damages including but not limited to transportation and gasoline costs to the law firm, telephone call charges, postage, and other damages.

39. FILIPS continues to incur attorney fees and costs in filing this suit and bringing this matter to trial.

40. Each of WFNNB'S harassing acts were so willful, vexatious, outrageous, oppressive, and maliciously calculated enough, so as to warrant statutory penalties and punitive damages.

VI.

FOUR (4) CAUSES OF ACTION

FIRST CAUSE OF ACTION:

VIOLATION OF §1788.17 of the RFDCPA

41. FILIPS realleges and incorporates by reference the above paragraphs as though set forth fully herein.

42. FDCPA 15 USC § 1692(b)(6) provides in pertinent part:

after the debt collector knows the consumer is ***represented by an attorney*** *with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address,* ***not communicate with any person other than that attorney......***

43. WFNNB violated 15 USC § 1692(b)(6) since it contacted and harassed FILIPS after being directly notified of attorney representation.

44. FDCPA 15 USC § 1692(c)c provides:

If a consumer notifies a debt collector in writing that the consumer ***refuses to pay*** *a debt or that the consumer wishes the debt collector to* ***cease further communication*** *with the consumer, the debt collector shall* ***not communicate*** *further with the consumer with respect to such debt.*

45. WFNNB violated 15 USC § 1692(c)c since it contacted and harassed FILIPS after being directly notified of the refusal to pay the debt.

46. WFNNB violated 15 USC § 1692(c)c since it contacted and harassed FILIPS after being directly notified to cease and desist all further communication.

47. California Civil Code Section § 1788.17 requires that WFNNB comply with the provisions of 15 USC § 1692(b)(6) and § 1692(c)c.

48. The foregoing violations of 15 USC § 1692(b)(6) and § 1692(c)c by WFNNB result in separate violations of California Civil Code Section § 1788.17.

49. The forgoing acts by WFNNB were willful and knowing violations of Title 1.6C of the California Civil Code (FRDCPA), are sole and separate violations under California Civil Code Section § 1788.30(b), and trigger **multiple $1,000.00 penalties**.

50. California Civil Code Section 1788.17 provides that WFNNB is subject to the remedies of 15 USC § 1692(k) for failing to comply with the provisions of 15 USC § 1692(b)(6) and § 1692(c)c.

51. The forgoing acts by WFNNB were intentional, persistent, frequent, and devious violations of 15 USC § 1692(b)(6) and § 1692(c)c, which trigger **additional damages of $1,000.00** under 15 USC § 1692(k)(a)(2)(A).

SECOND CAUSE OF ACTION:

VIOLATION OF § 1788.14(c) of the RFDCPA

52. FILIPS realleges and incorporates by reference the above paragraphs as though set forth fully herein.

53. California Civil Code Section 1788.14(c) provides in pertinent part: *No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:*

> *(c)* ***Initiating communications****, other than statements of account, with the debtor with regard to the consumer debt, when the debt collector has been previously* ***notified in writing by the debtor's attorney that the debtor is represented by such attorney*** *with respect to the consumer debt and such*

notice includes the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney.....

54. WFNNB violated California Civil Code Section § 1788.14(c) since they contacted and harassed FILIPS beyond statements of account, after being directly notified in writing of attorney representation concerning the debt.

55. The forgoing act(s) by WFNNB were willful and knowing violations of Title 1.6C of the California Civil Code (FRDCPA), are sole and separate violations under California Civil Code Section § 1788.30(b), and trigger **additional $1,000.00 penalties** against WFNNB.

THIRD CAUSE OF ACTION:

INVASION OF PRIVACY (INTRUSION UPON SECLUSION)

56. FILIPS repeats re-alleges and incorporates by reference all other paragraphs.

57. WFNNB engaged in improper conduct in knowingly and intentionally pursuing FILIPS to force payment of their debt.

58. FILIPS had a reasonable expectation of privacy in his solitude, seclusion, and or private concerns or affairs of privacy.

59. WFNNB intentionally intruded on FILIPS' privacy by repeated harassment from unlawful communications.

60. WFNNB'S intrusions and invasions against FILIPS occurred in such a way that would be highly offensive to reasonable persons in that position.

FOURTH CAUSE OF ACTION:

TORT IN SE

61. FILIPS realleges and incorporates the above paragraphs as though set forth fully herein.

62. WFNNB engaged in an unlawful course of conduct in violations of the FDCPA, RFDCPA, California Civil Code Section §1708, California Civil Code Section §43.

63. WFNNB violated a statutory duty owed to another and is thus liable under the doctrine of "Tort-in-Se."

VII.

PRAYERS FOR RELIEF

WHEREFORE, FILIPS having set forth the claims for relief against WFNNB, respectfully prays that this Court grant relief in the amount of **$76,391.00** monetary damages (**$6,581.00** Actual Damages, **$4,000.00** Penalties, **$65,810.00 Punitive** Damages), **Attorney Fees and Costs** According to Proof, **Injunctive Relief**, and **Declaratory Relief**.

Such relief is reasonably justified under the circumstances, and is more specifically broken down as follows:

A. **Actual Economic Damages** totaling at least **$1,581.00**, consisting of **$566.00 attorney fees** previously paid to Doan Law Firm to end the harassment, and $15.00 in transportation, gasoline, telephone call charges, and postage, pursuant to California Civil Code §1788.30(a); **$1,000.00 Additional Damages** pursuant to California Civil Code § 1788.17 incorporating 15 USC § 1692(k); and other economic damages accruing prior to the Order for Bankruptcy Relief;

B. **Actual Non-Economic Damages** of **$5,000.00** pursuant to California Civil Code §1788.30(a) for mental and emotional distress, nervousness, grief, embarrassment, loss of sleep, anxiety, worry, mortification, shock, humiliation, indignity, pain and suffering, and other injuries;

C. Penalties of **$2,000.00** against WFNNB arising from two (2) violations at $1,000.00 per violation pursuant to California Civil Code §1788.17 and §1788.30(b);

D. Penalties of **$2,000.00** against WFNNB arising from two (2) violations at $1,000.00 per violation pursuant to California Civil Code §1788.14(c) and §1788.30(b).

E. **Punitive damages of $66,140.00** equal to 10 times the forgoing Actual Damages for Invasion of Privacy, Right to Seclusion, and Tort in Se;

F. **Costs of Litigation** and reasonable **Attorney's Fees** against WFNNB pursuant to California Civil Code §1788.30(c), and Cal. Code Civ. Proc. §1021.5, California Civil Code §1788.17 for the violation of 15 USC §1962k of the FDCPA, Right to Seclusion, Tort in Se;

G. **Injunctive Relief** against WFNNB, restraining them from any further contact with FILIPS;

H. **Declaratory Relief** against WFNNB, declaring their practices of communicating with and harassing FILIPS was in violation of California Civil Code Section §1788.14(c), California Civil Code Section §1788.17, California Civil Code Section §1708, California Civil Code Section 43, 15 USC § 1692(b)(6), and 15 USC § 1692(c)c;

I. Such other and further relief as the Court may deem just and proper.

Dated: June 19, 2008

Respectfully submitted,

DOAN LAW FIRM, LLP

By: ______________________
Matthew M. McCormick,
Attorney for Plaintiff

EXHIBIT A

WORLD FINANCIAL NETWORK NATIONAL BANK RECOVERY

06/02/08

GERALD G FILIPS
7916 ROCOSO LN
CARLSBAD CA 92009-9232

Your balance: $670.21
Your account number: 3205-819-836

Dear GERALD G FILIPS,

Our last letter to you offered you the chance to resolve the balance on your SPORTS AUTHORITY account by calling and authorizing a payment by phone. We have not heard from you or received any indication that you intend to accept responsibility for your obligation.

Your SPORTS AUTHORITY account has been reported to a credit bureau as a bad debt. This indicates to current and future credit grantors that you did not pay this bill as agreed. To have this account reported as paid, and to avoid further collection activity, it is important that you call me today at 1-800-695-7444 ext 4845 to authorize a payment by phone.

Sincerely,

GLORIA MARTINEZ
Recovery Specialist
1-800-695-7444 ext 4845

WD3
0001306

IMPORTANT NOTICE: THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
Send bankruptcy notices/related correspondence to PO Box 182125, Columbus, OH 43218-2125
TDD/TTY 1-800-815-3596
Correspondence - PO Box 182124 Columbus OH 43218-2124

WORLD FINANCIAL NETWORK NATIONAL BANK RECOVERY

05/18/08

GERALD G FILIPS
7916 ROCOSO LN
CARLSBAD CA 92009-9232

Your balance: $670.21
Your account number: 3205-819-836

Dear GERALD G FILIPS,

Your SPORTS AUTHORITY account has been written off as a bad debt and I have been assigned to review your account to determine our course of action to collect the balance due. Prior to making any recommendations regarding this account, I want to provide you with an opportunity to resolve this matter. Please call me at 1-800-695-7444 ext 4845 to authorize a payment by phone or discuss your financial situation.

Failure to reply will result in further collection activity as permitted by law. As you have been previously notified, we intend to take any steps available and permitted by law to protect our interests. This may include sending your account to an outside collection agency or attorney in your area for further actions.

Sincerely,

GLORIA MARTINEZ
Recovery Specialist
1-800-695-7444 ext 4845

WD2
0002925

IMPORTANT NOTICE: THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
Send bankruptcy notices/related correspondence to PO Box 182125, Columbus, OH 43218-2125
TDD/TTY 1-800-815-3596
Correspondence - PO Box 182124 Columbus, OH 43218-2124

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED
2008 AUG -8 PM 12:48
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

'08 CV 1447 JAH CAB

BY FAX

I. (a) PLAINTIFFS	DEFENDANTS
GERALD G. FILIPS, an individual	WORLD FINANCIAL NETWORK NATIONAL BANK, a National Bank
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Franklin County, OH (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) DOAN LAW OFFICES, 2850 Pio Pico Drive, Suite D, Carlsbad, CA 92008, (760) 450-3333	ATTORNEYS (IF KNOWN) David J. Kaminski, Esq., CARLSON & MESSER LLP, 5959 W. Century Blvd., Suite 1214, Los Angeles, CA 90045, (310) 242-2200

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- [ ] 1 U.S. Government Plaintiff
- [X] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	[X] 1	[ ] 1	Incorporated or Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[X] 2	Incorporated and Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Cal.Rosenthal FDCPA, Ca. Civil Code Section 1788 et seq. which incorporates the federal FDCPA, 15 U.S.C. Section 1692 et seq.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS — PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury

PERSONAL INJURY
- [ ] 362 Personal Injury - Medical Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/Accommodations
- [ ] 444 Welfare
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motion to Vacate Sentence

HABEAS CORPUS:
- [ ] 530 General
- [ ] 535 Death Penalty
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Conditions

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 630 Liquor Laws
- [ ] 640 R.R. & Truck
- [ ] 650 Airline Regs.
- [ ] 660 Occupational Safety/Health
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt. Reporting & Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- [ ] 400 State Reappointment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce/ICC Rates/etc.
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 810 Selective Service
- [ ] 850 Securities/Commodities/Exchange
- [ ] 875 Customer Challenge 12 USC 3410
- [ ] 891 Agricultural Acts
- [ ] 892 Economic Stabilization Act
- [ ] 893 Environmental Matters
- [ ] 894 Energy Allocation Act
- [ ] 895 Freedom of Information Act
- [ ] 900 Appeal of Fee Determination Under Equal Access to Justice
- [ ] 950 Constitutionality of State Statutes
- [X] 890 Other Statutory Actions

VI. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- [ ] 1 Original Proceeding
- [X] 2 Removal from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

[ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 76,391.00

CHECK YES only if demanded in complaint: JURY DEMAND: [ ] YES [X] NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE ____________ Docket Number ____________

DATE: August 7, 2008

SIGNATURE OF ATTORNEY OF RECORD: [signature]

153828 $350.00 TB 08/08/08

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

ORIGINAL

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 153828 - MB

August 08, 2008
12:49:36

Civ Fil Non-Pris
USAO #.: 08CV1447 CIVIL FILING
Judge..: JOHN A HOUSTON
Amount.: $350.00 CK
Check#.: BC218204

Total-> $350.00

FROM: GERALD G FILIPS VS
WORLD FINANCIAL NETWORK